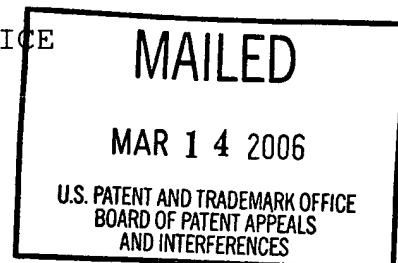


The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte CARLINO PANZERA and LISA M. KAISER

Application No. 09/460,951

ORDER RETURNING UNDOCKETED APPEAL TO THE EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on March 4, 2006. An in-depth review of the application has revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

INFORMATION DISCLOSURE STATEMENT

Appellants filed two Information Disclosure Statements (IDS's) on April 21, 2003, and November 24, 2003. A review of the application reveals that the examiner did not properly consider the IDS's filed on April 21, 2003, and November 24, 2003.

Application No. 09/460,951

According to the **Manual of Patent Examining Procedure (MPEP)**

§ 609(C)(2) (Rev. 1, Feb. 2000) which states in-part:

Examiners must consider **all** citations submitted in conformance with the rules and this section, and their initials when placed adjacent to the considered citations on the list or in the boxes provided on a form PTO-1449 . . . Those citations not considered by the examiner will have a line drawn through the citation and any citations considered will have the examiner's initials adjacent thereto

. . . .

. . . . If a statement fails to comply with requirements as discussed in this section for an item of information, a line should be drawn through the citation to show that it has not been considered. The other items of information listed that **do** comply with the rules and this section **will** be considered by the examiner and **will** be appropriately initialed [emphasis added].

It is clear from the record that the Information Disclosure Statements were not properly considered by the examiner.

APPEAL BRIEF

Further review of the application reveals that the Appeal Brief filed on September 8, 2005 does not comply with the new rules under 37 CFR § 41.37(c).

37 CFR § 41.37(c) states in-part:

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

.

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

.

(ix) Evidence appendix. An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

The following section is missing from the Appeal Brief filed September 8, 2005:

(10) **Evidence Appendix** as stated in 37 CFR § 41.37(c)(1)(ix).

It is required that a supplemental Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c). For more information on the Board's new rules, please see the web page entitled: "More Information on the Rules of Practice Before the BPAI," Final Rule at:
<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

Application No. 09/460,951

Accordingly, it is

ORDERED that the application is remanded to the examiner:

(1) for proper consideration of the Information Disclosure Statements filed April 21, 2003; and November 24, 2003 by either initialing all of the references, or by drawing a line through the references not considered;

(2) to notify appellants in writing of consideration;

(3) to hold the Appeal Brief filed on September 8, 2005, defective;

(4) to notify appellants to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37; and

(5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By:



DALE M. SHAW
Program and Resource Administrator
(703) 308-9797

cc: CANTOR COLBURN, LLP
55 GRIFFIN ROAD SOUTH
BLOOMFIELD, CT 06002

DMS:hh